

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 115 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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VADILAL LALLUBHAI MEHTA

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 115 of 1989
MR MANISH J SHAH for MR JP SHAH for Petitioner No. 1
MR BB NAIK for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 05/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the assessee, the following question is referred for our opinion in respect of assessment year 1980-81:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that deduction u/s.80 T of the I.T. Act should be allowed only after getting off the capital loss suffered on the sale of other assets, and not with reference to the gross amount of capital gain earned by the appellant?"

2. We have heard Mr Manish J Shah, learned counsel for the applicant - assessee and Mr BB Naik learned Standing Counsel for the revenue.

3. Our attention is drawn to the decision of this Court in the case of Gautam Sarabhai 129 ITR 133 which was also relied upon by the Tribunal for deciding the matter in favour of the revenue.

4. Having heard the learned counsel for the parties, we are of the view that there is no reason for not following the aforesaid decision of this Court in the present case also.

We accordingly answer the question referred in the affirmative i.e. in favour of the revenue and against the assessee.

5. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J) (K.A. Puj, J)
zgs/-